IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. REV. No.720 of 2005
SANJARI DEVI
Versus
STATE OF BIHAR & ORS
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6. 21.8.2008. This petition has been filed against the order dated 20.7.2005 passed by C.J.M., Katihar in C.A. Case No.1382 of 2004 thereby and there under the learned Magistrate has dismissed the complaint case under section 203 Cr.P.C.

According to the complaint filed by the petitioner while she was standing in school premises in order to protect herself for rain, the opposite parties/accused came, abused her and called her by her caste name. When the rain stopped, she left for her home. However, the opposite parties followed her, dragged her in a field and committed rape.

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In course of enquiry, five witnesses were examined on behalf of the complainant apart from herself. The opposite parties also appeared in case during enquiry and filed certain documents to show enmity with some witnesses. The learned C.J.M. after perusal of the evidence did not find sufficient ground for proceeding and, accordingly, dismissed the complaint.

The learned counsel for the petitioner challenged the order in question mainly on the ground that the learned Magistrate beyond the scope of the enquiry under section 202 Cr.P.C. has evaluated and shifted the evidence of the witnesses like trial. It is further submitted that all the witnesses examined on behalf of the petitioner have fully supported the prosecution story on all material

points. At this stage, it was not proper for the learned Magistrate to reject their evidence after shifting it like trial.

Scope of enquiry under section 202 Cr.P.C. and circumstances under which a complaint is dismissed under section 203 Cr.P.C. has been dealt with in a decision of the apex court reported in 1972 Supreme Court 2639 (Nirmaljit Singh Hoon vrs. The State of West Bengal and another). In paragraph-22 it has been observed as follows :

> " 22. Under Section 190 of the Code of Criminal Procedure, a Magistrate can take cognizance of an offence, either on receiving a complaint or on a police report or on information otherwise received. Where a complaint is presented before him, he can under Section 200 take cognizance of the offence made out therein and has then to examine the complaint and his witnesses. The object of such examination is to ascertain whether there is a prima facie case against the person accused of the offence in the complaint, and to prevent the issue of process on a complaint which is either false or vaxatious or intended only to harass such a person. Such examination is provided therefore to find out whether there is or not

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sufficient ground for proceeding. Under Section 202, a magistrate, on receipt of a complaint, may postpone the issue of process and either inquire into the case himself or direct an inquiry to be made by a Magistrate subordinate to him or by a police officer for ascertaining its truth or falsehood. Under Section 203, he may dismiss the complaint; if, after taking the statement of the complainant and his witnesses and the result of the investigation, if any, under Section 202, there is in his judgment "no sufficient ground for proceeding". The words 'sufficient ground' used also in Section 209 have been construed to mean the satisfaction that a prima facie case is made out against the person accused by the evidence of witnesses entitled to a reasonable degree of credit, and not sufficient ground for the purpose of conviction. In Vadilal Panchal v. Ghadigaonker, this Court considered the scheme of Sections 200 to 203 and held that the inquiry envisaged there is for ascertaining the truth or falsehood of the complaint, that is, for ascertaining whether there is evidence

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in support of the complaint so as to justify the issue of process. The section does not say that a regular trial of adjudging truth or otherwise of the person complained against should take place at that stage, for, such a person can be called upon to answer the accusation made against him only when a process has been issued and he is on trial. Section 203 consists of two parts. The first part lays down the materials which the Magistrate must consider, and the second part says that if after considering those materials there is in his judgment no sufficient ground for proceeding, he may dismiss the complaint. In Chandra Deo Singh v. Prokash Chandra Bose, where dismissal of a complaint by the Magistrate at the stage of Section 202 inquiry was set aside, this Court laid down that the test was whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction, and observed that where there was prima facie evidence, even though the person charged of an offence in the complaint might have a defence, the matter had to be left to be decided by the appropriate forum at

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the appropriate stage and issue of a process could not be refused. Unless, therefore, the Magistrate finds that the evidence led before him is self-contradictory, or intrinsically untrustworthy, process cannot be refused if that evidence makes out a prima facie case. In a revision against such a refusal, the High Court also has to apply the same test. The question, therefore, is, whether while applying this test the Chief Presidency Magistrate was right in refusing process and the High Court in revision could confirm such a refusal."

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In view of law laid down by the apex court, this Court is of the view that the learned C.J.M. has committed grave illegality in dismissing the complaint. No cogent reason has been assigned by the learned lower court. He has also scrutinized the evidence of the witnesses like trial.

Having regard to the facts and circumstances as well as law laid down by the apex court, this application is allowed. The impugned order is hereby set aside and the matter is remanded back to the court below for further enquiry and to pass fresh order in accordance with law.

( Ghanshyam Prasad )

N.H./

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